

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6310 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

BEVERLY M. HOLLAND
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-232

FORMERLY BENEFIT DECISION No. 6310
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S.S.A. No.

WESTERN UNION TELEGRAPH COMPANY
(Employer-Appellant)

Account Number

Referee's Decision
No. SF-2230

STATEMENT OF FACTS

The above-named employer appealed from the decision of a referee which held that the claimant had without good cause refused an offer of new work under section 1257(b) of the Unemployment Insurance Code, rather than that she had without good cause voluntarily left her employment under section 1256 of the code as contended by the employer, and that the employer's account was thereby subject to benefit charges under section 1032 of the code. A brief was filed by the employer-appellant.

The claimant was last employed as a telephone operator for a period of nine months by this employer in its Salinas office. Her hours of work were from 8 a.m. to 5 p.m., 5 days per week. The claimant's gross wages were \$52 per week or \$47 net after deductions. The claimant lived only a short distance from the employer's office, and she walked to and from work.

Because of a seasonal curtailment in operations, it became necessary for the employer to reduce the staff of its Salinas office on November 19, 1954. Although the claimant did not have sufficient seniority to retain her job in Salinas, under the terms of an agreement between the claimant's union and the employer, she could have "bumped" an employee at the employer's Monterey office and could have transferred to work in that office. The job in Monterey was for the same type of work the claimant did in the Salinas office and paid the same wages. The hours of work, however, were from 1:30 p.m. to 10:00 p.m., Monday through Friday.

The distance between Salinas and Monterey is 24 miles and the two towns are served by public transportation. The cost thereof is not shown in the record. Bus service which would have permitted the claimant to work from 1:30 p.m. to 10:00 p.m. departed from Salinas at 12:05 p.m. and arrived at Salinas on a return trip at 10:55 p.m.

The claimant is divorced and is the mother of a three-year-old child. During the time the claimant worked from 8:00 a.m. to 5:00 p.m., her mother was able to care for her child; however, in order to have taken the job in Monterey, the claimant would have been required to make other provisions for the child's care.

Effective November 21, 1954, the claimant registered for work and filed a claim for unemployment compensation benefits in the Salinas office of the Department of Employment. On December 12, 1954, the department determined that the claimant had voluntarily left her most recent work with good cause under section 1256 of the Unemployment Insurance Code and was not subject to disqualification thereunder. Concurrently, the department issued a ruling under section 1030 of the code to the same effect. The referee modified the determination and ruling of the department and held that the claimant had without good cause refused an offer of new work under section 1257(b) of the code rather than that she had voluntarily left her employment under section 1256 of the code. The referee also concluded that the employer's account was subject to benefit charges based on wages earned from the employer prior to November 20, 1954.

The issues to be decided are:

(1) Did the claimant voluntarily leave her last employment or did she refuse an offer of new employment?

(2) Is the employer's account subject to charge for any benefits paid to the claimant?

REASONS FOR DECISION

This Appeals Board has not previously had occasion to consider a factual situation exactly equivalent to that presently before us wherein a worker was faced with the alternative of being laid off in one of the employer's establishments for lack of work or of taking work with the same employer in another city. However, we have considered other related situations which are of assistance in reaching a determination whether the claimant voluntarily left her most recent employment or whether she refused an offer of new work.

We have consistently held that a claimant who has elected to give up employment rather than accept a reclassification or transfer to different work for the same employer at a lower rate of pay must be deemed to have voluntarily left his most recent work, rather than to have refused an offer of new work (Benefit Decisions Nos. 5512 and 5952). We have also held that a claimant, who was the manager of a retail ice cream store and who was offered a transfer to other stores in the same city as assistant manager at a lower rate of pay, voluntarily left her work as distinguished from a refusal of new work (Benefit Decision No. 5978).

In Benefit Decision No. 6054, the claimant, who was a clerk in the employer's Oakland store, was on a leave of absence due to illness. She left the work on expiration of the leave because the commuting time of three hours a day from her home in San Jose contributed to her nervousness. She did not request transfer to the employer's branch store in San Jose although she was aware of the employer's transfer policy. We held in that decision that the claimant could have preserved the employer-employee relationship by requesting a transfer to the San Jose store of the employer. We arrived at the same conclusion in Benefit Decision No. 5197 where a claimant, upon moving from Visalia to

Los Angeles, failed to take advantage of the employer's transfer policy and by so doing terminated continuous employment with the employer. Thus, we recognized in the last two mentioned decisions that, although the claimants may have had valid reasons for leaving their then places of employment, in the last analysis it was not the leaving of work at such establishments which constituted the determining factor but rather their failure to take advantage of the opportunity to transfer to work with the employer in another city which was the effective cause of the termination of employment and that such termination constituted a voluntary leaving of work.

Under the rationale of our prior decisions, we find no valid basis for distinguishing between a situation wherein the transfer to work in another locality arose because of a situation created by the worker or one wherein such transfer or possibility of transfer to another locality was one created by the employer, as in the case before us. Accordingly, it is our opinion that the claimant voluntarily left her most recent work and that we are not concerned with any question as to whether she refused an offer of employment.

Section 1256 of the Unemployment Insurance Code, provides in part that:

"An individual is disqualified for unemployment compensation benefits if the director finds that he left his most recent work voluntarily without good cause"

In the present case the claimant received, and would have continued to receive had she transferred to work in Monterey, a gross wage of \$52 a week or a net wage after deductions of \$47. Had the claimant taken the job in Monterey, she would have been required to spend approximately three hours per day in commuting time at what would undoubtedly have been a fairly substantial cost. In addition, the claimant would have had to make other arrangements for the care of her child. Undoubtedly, this too would have involved a considerable extra expense in view of the required additional three hours away from home and the fact

that evening care would have had to be provided. Considering all of these factors, it is our conclusion that the claimant had good cause for leaving her employment under section 1256 of the code and also as that term is to be construed under section 1030 of the code (Benefit Decisions Nos. 5008 and 5087; Ruling Decision No. R-1).

DECISION

The decision of the referee is modified. The claimant is not subject to disqualification under section 1256 of the code. Benefits are payable provided the claimant is otherwise eligible. Any benefits paid to the claimant based on wages earned from the employer prior to November 20, 1954 shall be chargeable under section 1032 of the code to Employer Account No. 002-3138.

Sacramento, California, June 30, 1955.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS (Absent)

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6310 is hereby designated as Precedent Decision No. P-B-232.

Sacramento, California, February 9, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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